

DOCKETED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

JUL 12 1977

H. STUART CUNNINGHAM
At o'clock
CLERK

THE MAGNAVOX COMPANY,
a Corporation, and
SANDERS ASSOCIATES, INC.,
a Corporation,

Plaintiffs,

v.

CHICAGO DYNAMIC INDUSTRIES,
INC., a Corporation, et al.

Defendants.

Civil Action No. 74 C 1030

NOTICE OF MOTION

PLEASE TAKE NOTICE that at 9:30 a.m. on the 12th day of July, 1977, plaintiffs in the above-identified action, The Magnavox Company and Sanders Associates, Inc., will present the attached MOTION FOR ENTRY OF SUPPLEMENTAL JUDGMENT SPECIFYING DAMAGES AGAINST CHICAGO DYNAMIC INDUSTRIES, INC. to the Honorable John F. Grady, or to any other judge who may be sitting in his place, at the United States District Court for the Northern District of Illinois, Chicago, Illinois.

July 11, 1977


Theodore W. Anderson
James T. Williams

Attorneys for Plaintiffs

Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602
(312) 346-1200

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY,
a Corporation, and
SANDERS ASSOCIATES, INC.,
a Corporation,

Plaintiffs,

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CHICAGO DYNAMIC INDUSTRIES,
INC., a Corporation, et al.

Defendants.

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MOTION FOR ENTRY OF SUPPLEMENTAL
JUDGMENT SPECIFYING DAMAGES AGAINST
CHICAGO DYNAMIC INDUSTRIES, INC. AND
SUPPORTING MEMORANDUM

Plaintiffs, The Magnavox Company and Sanders Associates, Inc., hereby move for entry of the SUPPLEMENTAL JUDGMENT SPECIFYING DAMAGES AGAINST DEFENDANT CHICAGO DYNAMIC INDUSTRIES, INC. attached hereto. The supplemental judgment provides that plaintiffs recover from defendant Chicago Dynamic Industries, Inc. (hereinafter CDI) the sum of \$225,539.55 with interest. As will be more fully explained hereinafter, that amount is computed as 4.25% of the sales by CDI of the video games found by the Court to infringe plaintiffs' United States Patent No. 3,659,284 and its reissue patent Re. 28,507. An Affidavit of James T. Williams, one of plaintiffs' counsel, is submitted herewith in support of this motion. Entry of the judgment will fully dispose of this case.

THE PRIOR JUDGMENT

As the Court is aware, on June 1, 1977, a FINAL JUDGMENT was entered, finding, among other things, that the plaintiffs' United States Patent No. 3,659,284 and its reissue patent Re. 28,507 were valid and were infringed by CDI by the manufacture, use and sale of its video games TV Ping Pong, TV Tennis, Olympic TV Hockey, Olympic TV Football, TV Goalee, TV Pingame, and Super Flipper. CDI was permanently enjoined from infringing patent Re. 28,507, but in paragraph 12 of the judgment, the matter of damages to be awarded plaintiff was left open for future resolution.

On June 1, 1977, plaintiffs served upon CDI a set of interrogatories requesting, among other things, its sales in terms of both dollars and units of the games which had been found to infringe plaintiffs' patents. CDI itself did not respond to these interrogatories, but a response was made by Mr. Nathan Yorke, who stated that he was the assignee and trustee for the benefit of the creditors of CDI.

THE PRESENT STATUS OF CDI

As presently appears from both the interrogatory responses referred to above and representations made to the Court by David G. Lynch, Esquire, representing the Central National Bank in Chicago, and David W. Schoenberg, representing Stern Electronics, Inc., at the hearing in this case on June 15, 1977,

in November, 1976, the Central National Bank in Chicago and the Main Bank of Chicago foreclosed on loans made to CDI by taking possession of most of its assets. An auction was held at which the Central National Bank purchased those assets, and on December 17, 1977, those assets were purchased from the bank by Stern Electronics, Inc. Those assets included the books and records of CDI.

On March 11, 1977, CDI executed a general assignment for the benefit of creditors assigning all its remaining property to Mr. Nathan Yorke as assignee and trustee for the benefit of its creditors. At the present time Mr. Yorke is administering the estate of CDI.

THE EVIDENCE SUPPORTING
THE DAMAGE AWARD

At the June 15 hearing, Mr. Schoenberg, on behalf of Stern Electronics, volunteered to make the books and records of CDI available to plaintiffs so that they could determine the amount of damages due to them. Pursuant to this, and as more fully stated in the affidavit submitted herewith, Mr. Schoenberg provided plaintiffs' counsel with a letter from John F. Neven, Controller of Stern Electronics, Inc., which showed that CDI had sold 6,209 of the games found to infringe the 3,659,284 and Re. 28,507 patents and that the total dollar sales of those games was \$5,306,813.00.

Title 35 U.S.C., §284(a) provides that a patentee shall be awarded upon a finding of infringement:

"damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer."

Recovery of "a reasonable royalty" is the minimum amount the patentee is entitled to in the absence of a showing of greater actual damages. Zegers v. Zegers, Inc., 458 F.2d 726, (7th Cir. 1972). The case law is settled that one measure of "a reasonable royalty" is the royalty provided for in licenses under the patent in suit. Anchor Plastics Co., Inc. v. Dynex Plastics Corp., 184 U.S.P.Q. 482 (D.N.J. 1974); Mercantile National Bank of Chicago v. Quest, Inc., 173 U.S.P.Q. 652 (N.D. Ind. 1972).

At the trial in this case, four sublicense agreements under the patents in suit were placed in evidence, agreements between Magnavox and Midway Mfg. Co. (PX 92A), Coleco Industries, Inc. (PX 92B and 92B-1), Centronics Data Computer Corporation (PX 92C), and Atari, Inc. (PX 92D). The Atari and Coleco agreements relate to home or consumer video games rather than coin-operated video games of the type manufactured by CDI. The Midway agreement, as well as the Atari agreement, was entered into in settlement of litigation. The sublicense agreement with Centronics Data Computer Corporation has neither one of these problems associated therewith; that agreement thus appears to be the most

relevant guide to determining the amount of a reasonable royalty and a copy thereof is attached to the Williams affidavit.

The Centronics agreement grants a sublicense under a number of patents including U.S. Patent 3,659,284 and its reissue and provides at page 6, ¶3.01(c), for a royalty of 4.25% of the net selling price of video games which are the subject matter of any one of the licensed patents. The amount of \$225,539.55 stated in the judgment is 4.25% of the \$5,306,813.00 total sales figure given by Stern Electronics.

The judgment further provides for interest at the rate of 6% per annum in accord with 28 U.S.C. §1961. The applicable Illinois law provides that interest on judgments be computed at a rate of 6% per annum. Ill. Ref. Stat., ch. 74, §3.

It is respectfully requested that this motion be granted and the attached supplemental judgment be entered against CDI.

July 11, 1977



Theodore W. Anderson
James T. Williams

Attorneys for Plaintiffs

Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602
(312) 346-1200

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THE MAGNAVOX COMPANY,
a Corporation, and
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Plaintiffs,

v.

CHICAGO DYNAMIC INDUSTRIES,
INC., a Corporation, et al.

Defendants.

Civil Action No. 74 C 1030

AFFIDAVIT OF JAMES T. WILLIAMS

State of Illinois)
County of Cook) ss.

I, JAMES T. WILLIAMS, do depose and say as follows:

1. I am a member of the bar of this Court and am one of the counsel representing the plaintiffs in the above-headed action. As a part of that representation, I have been involved in attempting to obtain the necessary information to liquidate the claim of plaintiffs against the defendant Chicago Dynamic Industries, Inc. (hereinafter CDI) which formed the subject matter of that action.

2. I attended the hearing in the above-headed action on June 15, 1977 which hearing was also attended by David N.

Schoenberg, Esquire, representing Stern Electronics, Inc. During the course of that hearing and during telephone and personal conversations both before and after the hearing, I was informed by Mr. Schoenberg that Stern Electronics, Inc. had possession of the books and records of CDI and that Stern Electronics, Inc. desired to cooperate with plaintiffs in reducing the claim of plaintiffs against CDI to a fixed amount.

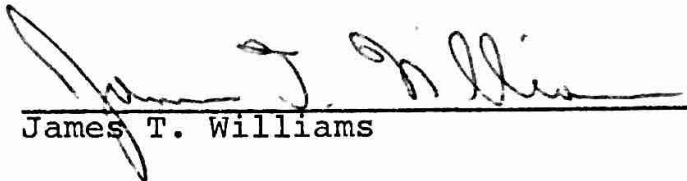
3. On June 20, 1977, I telephoned Mr. Schoenberg and asked that he and Stern Electronics, Inc. provide plaintiffs with, among other information, the total sales in both units and dollars by CDI of the television games TV Ping Pong, TV Tennis, Olympic TV Hockey, Olympic TV Football, TV Goalee, TV Pingame, and Super Flipper. Mr. Schoenberg stated that he would write to Stern Electronics, Inc. and convey our request to it.

4. On June 28, 1977, I received a letter from Mr. Schoenberg, a copy of which is attached hereto as "Exhibit A". That letter had attached thereto a copy of a letter from Mr. John F. Neven, Controller of Stern Electronics, Inc., to Mr. Schoenberg. A copy of Mr. Neven's letter is included in Exhibit A.


5. The letter of Mr. Neven referred to in paragraph 4 purports to show the sales figures requested from Stern Electronics, Inc. and referred to in paragraph 3 hereof. I have no reason to believe that the sales figures stated in

that letter of Mr. Neven are not accurate. The total sales figures of the games referred to in that letter are 6,209 units and \$5,306,813.00.

6. A true and correct copy of the sublicense agreement between The Magnavox Company and Centronics Data Computer Corporation, Plaintiffs' Exhibit 92C at the trial of this action, is attached hereto as "Exhibit B".


James T. Williams

Subscribed and sworn to before me
this 11th day of July, 1977.


Notary Public

My Commission expires: 5/31/81

LAW OFFICES
LIEBERMAN, LEVY, BARON & STONE, LTD.
TWENTY-EIGHTH FLOOR
150 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

TELEPHONE
AREA CODE 312
332-5500

ON LIEBERMAN
EROME LEVY
IS R. BARON
ERWIN J. STONE
BERT L. SCHLOSSBERG
ID C. ROSTON
ID W. SCHOENBERG
PHEN A. MARCUS
ETER POLANSKY
MICHAEL PECK
CMENT J. CARROLL, JR.
HARD D. LIEBMAN
RY S. ZEMAN

June 27, 1977

RECEIVED

JUN 28 1977

NEUMAN, WILLIAMS,
ANDERSON & OLSON
JAMES T. WILLIAMS

Mr. James T. Williams
Neuman, Williams, Anderson & Olson
77 West Washington Street
Chicago, Illinois 60602

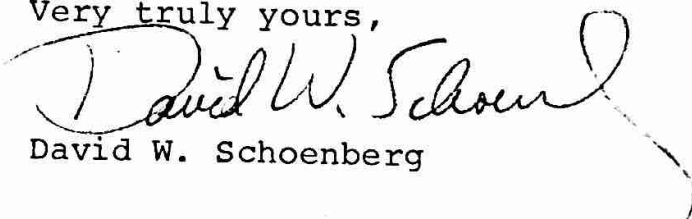
Re: Magnavox v. CDI
Infringement Litigation

Dear Jim:

Pursuant to our telephone conversation, I am enclosing a copy of a letter dated June 24, 1977 from John Neven. This letter provides you with the information which you were seeking with regard to CDI's sales of the infringing games. John Neven advises me that the first infringing game was sold on March 29, 1973. For your information, December 13, 1976 is the date on which CDI's assets were sold at public sale.

I trust the foregoing enclosure provides you with the information which you require in order to prepare your claim with the assignee for the benefit of creditors.

Very truly yours,


David W. Schoenberg

DWS/jb
Enc.

cc: Mr. H. Bruce Bernstein
Mr. Louis W. Levit

EXHIBIT A

STERN ELECTRONICS, INC.

1725 Diversey Parkway, Chicago, Illinois 60614
(312) 935-4600, Telex 25-4657

June 24, 1977

Mr. David Schoenberg
Sieberman, Levy, Baron & Stone, Ltd.
50 N. Wacker Drive - 28th Floor
Chicago, Illinois 60606

Re: Magnavox vs. C.D.I.
Infringement Litigation

Dear Dave:

The TV games that were sold by C.D.I. from March 29, 1973, through December 13, 1976, follows:

	<u>UNITS</u>	<u>SALES VOLUME</u>	<u>LIST PRICE</u>	<u>AVG. PRICE</u>
1. TV Ping Pong	3300	\$2,732,727	\$829	\$828.10
2. TV Tennis	1000	895,044	895	895.04
3. Olympic TV Hockey/ Football	750	660,020	875	880.03
4. TV Goalee	121	104,487	875	863.53
5. TV Pin Game	500	421,623	895	843.25
6. Super Flipper	538	492,912	1,179	916.19

Records for the TV Hockey and TV Football were combined since the football game was only a modified hockey game.

The actual selling price may have varied as a result of customizing or deletion of certain parts, close-outs, quantity sales, etc.

If additional information is needed, I will be happy to furnish the information providing that it is available.

Very truly yours,

STERN ELECTRONICS, INC.

John F. Neven

JOHN F. NEVEN
Controller

NONEXCLUSIVE SUBLICENSE AGREEMENT
FOR
COIN-OPERATED GAME DEVICES

THIS AGREEMENT, having an effective date of
August 22, 1975, and entered into by and between
THE MAGNAVOX COMPANY, a corporation of the State of Delaware,
with executive offices in New York, New York, U. S. A., and
corporate offices at 1700 Magnavox Way, Fort Wayne, Indiana,
U. S. A. 46804 (hereinafter referred to as LICENSOR) and
CENTRONICS DATA COMPUTER CORPORATION, a corporation of the
State of Delaware, with offices at One Wall Street, Hudson,
New Hampshire, U. S. A. 03051 (hereinafter referred to as
LICENSEE):

W I T N E S S E T H :

WHEREAS, LICENSOR is the exclusive licensee
under a plurality of patents and patent applications, the
title of which resides in Sanders Associates, Inc. (hereinafter
called SANDERS), a corporation of the State of Delaware,
having an office at Daniel Webster Highway South, Nashua,
New Hampshire, U. S. A. 03060;

WHEREAS, LICENSOR has the right under an agreement
dated January 27, 1972 (hereinafter referred to as OTHER
LICENSE AGREEMENT, a copy of which is attached hereto and
referred to as Exhibit A), to grant licenses under such
plurality of patents and applications;

WHEREAS, LICENSEE desires a nonexclusive sublicense under such OTHER LICENSE AGREEMENT;

NOW, THEREFORE, for and in consideration of the mutual understandings and obligations herein set forth, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.01 As used herein, the following terms shall have the following meanings:

(a) TERRITORY shall mean the United States.

(b) LICENSED PATENTS shall mean the following

Patents and Patent Applications:

<u>U. S. Patent No.</u>	<u>Issue Date</u>
3,497,829	February 24, 1970
3,599,221	August 21, 1971
3,659,284	April 25, 1972
3,659,285	April 25, 1972
3,728,480	April 17, 1973
3,737,566	June 5, 1973
3,778,058	December 11, 1973
3,829,095	August 13, 1974

<u>U. S. Application No.</u>	<u>Filing Date</u>
561,131	March 24, 1975
574,113	May 21, 1975
445,022	February 22, 1974 (original filed May 29, 1973)

and any and all reissues, divisions, continuations and extensions of any such Patents and Applications.

(c) LICENSED PRODUCT shall mean any coin-operated amusement game, or product similar thereto, which employs apparatus, methods and improvements covered by one or more

of LICENSED PATENTS (as defined above), with such coverage being determined by and to the extent of that provided by the law of the country of Licensed Patent issuance and in accordance with Article V, Section 3, of said OTHER LICENSE AGREEMENT, for the generation, display, control, manipulation, and use of symbols or geometric figures on cathode ray tubes such as television-type displays, said games or similar product being playable either by one or more individuals and including the television display device and any housing or cabinet as well as associated hardware for said coin-operated amusement game or product. The term LICENSED PRODUCT shall not include any apparatus, methods and improvements covered by LICENSED PATENTS, for consumer or home electronics type amusement games or any other type of amusement games not actuated in response to the insertion of currency or tokens such as coins.

(d) NET SELLING PRICE as used in this Agreement means invoice price f.o.b. factory, after deduction of regular trade and quantity discounts, but before deduction of any other items including but not limited to freight allowances, cash discounts, and agents' commissions.

(e) PERSON includes physical persons, partnerships, corporations, and other business entities, whether incorporated or unincorporated.

(f) DOLLARS shall mean United States of America dollars.

(g) **SUBSIDIARY** shall mean any corporation (including any legal entity similar thereto) or other kind of business organization in which **LICENSOR** or **LICENSEE**, as the case may be, now or hereafter has a "controlling interest." The term **SUBSIDIARY** also includes any other corporation or other kind of business organization in which such a corporation or business organization controlled by said **LICENSOR** or **LICENSEE**, now or hereafter has a "controlling interest." "Controlling interest" in the case of a corporation or business organization shall mean direct or indirect ownership or control by **LICENSOR** or **LICENSEE** of that number of the shares of said corporation, entity or organization which represents the right to elect a majority of the directors of the corporation, or persons performing similar functions; and in the case of any other kind of business organization, it means that direct or indirect ownership or control of the capital thereof, or other interest therein, by or through which **LICENSOR** or **LICENSEE** exercises or has the power to exercise in any manner, directly or indirectly, control or direction thereof.

ARTICLE II

LICENSES AND RIGHTS

2.01 **LICENSOR** hereby grants to **LICENSEE** and its ^{SUBSIDIARIES} ~~subsidiaries~~, subject to the reservations and conditions set forth herein a non-exclusive license, without the right to sublicense under the

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AB Brody

LICENSED PATENTS, to make LICENSED PRODUCTS and to use, sell, and lease LICENSED PRODUCTS made by LICENSEE throughout the TERRITORY.

2.02 No licenses under patents, expressed or implied, are granted by this Agreement except those specifically granted under the provisions of the foregoing Paragraph 2.01 of this Article II, and the LICENSED PATENTS referred thereto.

2.03 LICENSOR hereby warrants that it has the right to grant the license herein granted to LICENSEE.

ARTICLE III CONSIDERATION

3.01 LICENSEE agrees to pay royalties to LICENSOR on LICENSED PRODUCTS at the following rates for LICENSED PRODUCTS made, used, sold, leased, or otherwise disposed of (except as scrap) under this Agreement, during the term of the LICENSED PATENTS:

(a) Five and One Quarter Percent (5¼%) of the SELLING PRICE for LICENSED PRODUCTS covered by three or more of said LICENSED PATENTS;

(b) Four and Three Quarters Percent (4-3/4%) of the SELLING PRICE for LICENSED PRODUCTS covered by only two said LICENSED PATENTS;

(c) Four and One Quarter Percent (4¼%) of the NET SELLING PRICE for LICENSED PRODUCTS covered by only one of said LICENSED PATENTS;

(d) A non-returnable advanced payment based upon future royalties under subparagraphs 3.01(a), (b) and (c) above of One Thousand DOLLARS (\$1,000.00). This payment is to be made by LICENSEE upon execution of this Agreement.

3.02 In case the royalties paid do not aggregate a minimum of One Hundred Seventy DOLLARS (\$170.00) for the year ending December 31, 1975, and Five Hundred DOLLARS (\$500.00) for each succeeding calendar year during the life of this Agreement, the LICENSEE will within (30) days of the end of each such year make up the deficiency of the royalties actually paid to such minimum sum.

ARTICLE IV

PAYMENTS

4.01 All payments made by LICENSEE to LICENSOR are to be in United States DOLLARS and not reduced by taxes.

ARTICLE V

REPORTING OF ROYALTIES

5.01 LICENSEE, within thirty (30) days after and as of the end of each calendar quarter of each year during the

term of this Agreement, commencing as of the effective date, shall furnish to LICENSOR a royalty report specifying:

(a) the total number of each type of LICENSED PRODUCTS made, used, sold, leased, or otherwise disposed of (except as scrap) by LICENSEE during the preceding calendar quarter;

(b) the royalty rate and LICENSED PATENTS applicable hereunder to each type of said LICENSED PRODUCTS reported under the above subparagraph 5.01(a).

(c) the NET SELLING PRICES of each type of LICENSED PRODUCTS made, used, sold, leased, or otherwise disposed of (except as scrap) by LICENSEE during the preceding calendar quarter.

(d) the amount or amounts due to LICENSOR.

5.02 Each report so submitted shall be accompanied by the payments due to LICENSOR.

5.03 The first such royalty report and payment shall cover and include all such LICENSED PRODUCTS used, sold, leased, or otherwise disposed of (except as scrap) by LICENSEE and its SUBSIDIARIES from April 25, 1972, to the last day of the calendar quarter for which such first report is rendered and such payment is made.

5.04 LICENSEE agrees to make a written report to LICENSOR within thirty (30) days after the date of any termination by LICENSEE of any license under a LICENSED

PATENT received by LICENSEE under this Agreement, stating in such report the number, types, NET SELLING PRICES, and applicable royalties of all LICENSED PRODUCTS sold or otherwise disposed of and upon which royalty not previously reported to LICENSOR is payable in consequence of such LICENSED PATENT.

5.05 In order to insure to the LICENSOR the full royalty payments contemplated hereunder, the LICENSEE agrees that, in the event any LICENSED PRODUCTS shall be sold (1) to a corporation, firm, or association which, or individual who shall own a controlling interest in the LICENSEE by stock ownership or otherwise, or (2) to a corporation, firm or association in which the LICENSEE or stockholders of the LICENSEE, or any subsidiary company of the LICENSEE shall own, directly or indirectly, a controlling interest by stock ownership or otherwise, or (3) to a corporation, firm, or association with which, or individual with whom the LICENSEE or its stockholders of subsidiary companies shall have any agreement, understanding, or arrangement (such as, among other things, an option to purchase stock, or an arrangement involving a division of profits or special rebates or allowances) without which agreement, understanding, or arrangement, prices paid by such corporation, firm, association, or individual for the apparatus licensed hereunder would be higher than the NET SELLING PRICE reported by the LICENSEE, or if such agreement, understanding, or arrangement results in

extending to such corporation, firm, association, or individual lower prices for LICENSED PRODUCTS than those charged to outside concerns buying similar merchandise in similar amounts and under similar conditions, then, and in any of such events, the royalties to be paid hereunder in respect of such LICENSED PRODUCTS shall be based upon the NET SELLING PRICE at which the purchaser of LICENSED PRODUCTS so sold resells such PRODUCTS rather than upon the NET SELLING PRICE of the LICENSEE; provided, however, that the LICENSEE shall not be obligated under the foregoing to pay royalty based upon selling prices in excess of the standard net selling price at which it or any of the organizations or individuals associated with it as specified in this paragraph shall sell such apparatus to any wholly independent jobber or distributor.

5.06 LICENSEE shall retain, for a period of six (6) years after making a royalty report, the records, files, and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such report. Upon receipt of adequate and reasonable notice, LICENSEE shall permit the reasonable inspection, at reasonable times during normal business hours, at LICENSOR's expense, of such records, files, and books of account, by a certified public accountant acceptable to LICENSEE. Said accountant shall be permitted to inspect said records, files and books and LICENSEE shall give said accountant such other information as may be

necessary and proper to enable the amounts of payments payable hereunder to be accurately ascertained.

ARTICLE VI TERM AND TERMINATION

6.01 The word "termination" and cognate words such as "term" and "terminate" used in this Article VI are to be read, except where the contrary is specifically indicated, as omitting from their effects the following rights and obligations, all of which shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

(a) LICENSEE's obligation to supply a terminal report in respect to terminated rights as specified in Section 5.04 of Article V.

(b) LICENSOR's right to receive or recover and LICENSEE's obligation to pay royalties (including minimum royalties) accrued or accruable for payment at the time of any termination.

(c) LICENSEE's obligation to maintain records and LICENSOR's right to conduct a final audit as provided in Section 5.06 of Article V.

(d) licenses running in favor of customers or transferees of LICENSEE in respect to products sold or transferred by LICENSEE prior to termination of this Agree-

ment or of any license arising under this Agreement (subject to payment by LICENSEE of any royalties payable in respect to such products).

(e) any cause of action or claim of either party, accrued or to accrue, because of any breach or default by the other party.

6.02 Unless otherwise terminated as provided in Section 6.03 of this Article VI, this Agreement shall run to the end of the life of the last to expire of the LICENSED PATENTS and shall thereupon terminate.

6.03 At any time after two (2) years from the effective date of this Agreement, LICENSEE shall have the right to terminate this Agreement as a whole or its license and concomitant future obligations in respect to any LICENSED PATENT, provided there is no default hereunder, by ninety (90) days written notice to the LICENSOR; but such termination shall not operate to relieve the LICENSEE from its obligation to make a termination report hereunder or from its liability for payment of royalties on sales made hereunder prior to the date of such termination, or the minimum royalty prescribed for such calendar year.

6.04 If either LICENSOR or LICENSEE shall default in the performance of any of the terms and provisions of this Agreement to be performed by it, and such default shall not be cured within sixty (60) days after written notice

of such default is given by the non-defaulting party to the defaulting party, then at any time after the expiration of such sixty (60) days, the non-defaulting party may give written notice to the defaulting party of its election to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the receipt of such last mentioned notice. Such right of termination shall not be exclusive of any other remedies or means of redress to which the non-defaulting party may be lawfully entitled, it being intended that all such remedies be cumulative.

6.05 If either LICENSOR or LICENSEE should be dissolved, or should file a voluntary petition in bankruptcy, or an order should be entered pursuant to any law relating to bankruptcy or insolvency appointing a receiver or trustee for said party; then LICENSOR or LICENSEE, as the case may be, within sixty (60) days thereafter may give written notice to the party filing such petition in bankruptcy or subject to such order of its desire to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the filing of such notice.

ARTICLE VII
NO LEGAL REPRESENTATION

7.01 Nothing contained in this Agreement shall be construed as:

- (a) Conferring any license or right with respect to any trademark, trade, or brand name, the corporate name of either party or any of its subsidiaries, or any other name or mark, or any contraction, abbreviation, or simulation thereof;
- (b) A warranty or representation that any manufacture, use, sale, or other disposition of LICENSED PRODUCT will be free from infringement of any patents other than those under which and to the extent to which licenses are granted hereunder.

ARTICLE VIII
SUBSIDIARIES

8.01 This Agreement shall be binding upon and inure to the benefit of the SUBSIDIARIES and successors of each party hereto. It shall not be otherwise assignable by either of the parties hereto, in whole or in part, to any third party whatsoever, nor shall the rights hereof of either of the parties hereto otherwise be or become in any way, directly or indirectly, transferable or available to, or divisible

capable of being shared with, or inure to the benefit of any third party without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

LICENSEE shall be responsible for, and hereby assumes full liability in respect of all royalty reports and payments for all LICENSED PRODUCTS made, made for, used, sold, leased or otherwise disposed of by its SUBSIDIARIES during the term of this Agreement.

ARTICLE IX MARKING

9.01 LICENSEE agrees to mark all LICENSED PRODUCTS sold by it under the license herein granted with the word "Patents" or "Patent" and the numbers or number of the patents or patent applicable thereto. LICENSOR shall give LICENSEE timely notice of patents issuing pertaining to LICENSED PRODUCTS.

ARTICLE X CONVERSION OF LICENSOR LICENSE WITH SANDERS TO A NONEXCLUSIVE LICENSE

10.01 In the event that LICENSOR converts its LICENSE with Sanders to a nonexclusive license, or in the event that LICENSOR cancels its agreement with Sanders (Attached Exhibit "A"), then LICENSEE shall from the date of notice of such conversion to a nonexclusive license, or of the date of termination of the Sanders-Magnavox agreement, consider Sanders the LICENSOR in this Agreement and shall make all payments and be responsible for all obligations under this Agreement to Sanders.

ARTICLE XI

NOTICES

11.01 Any notice or request required or permitted to be given under or in connection with this Agreement or the subject matter hereof shall be deemed to have been sufficiently given when, if given to LICENSEE, it shall be addressed to

Centronics Data Computer Corp.
One Wall Street
Hudson, New Hampshire 03051
U. S. A.

and when, if given to LICENSOR, it shall be addressed to

Corporate Patent Counsel
The Magnavox Company
1700 Magnavox Way
Fort Wayne, Indiana 46804
U. S. A.

and in each case sent by registered air mail, postage prepaid. The date of receipt shall be deemed to be the date on which such notice or request has been given. Either party may give written notice of a change of address, and after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

ARTICLE XII

WAIVER - SEVERABILITY

12.01 (a) Waiver--The Waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such

party of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any such right, power, or privilege by such party.

(b) Severability--If any term, clause, or provision of this Agreement shall be judged to be invalid, the validity of any other term, clause, or provision shall not be affected; and such invalid term, clause, or provision shall be deemed deleted from the contract.

ARTICLE XIII LAW GOVERNING

13.01 This Agreement shall be construed, interpreted, and applied according to the laws of the State of Indiana.

ARTICLE XIV ASSIGNMENT

14.01 Except as otherwise provided herein, LICENSEE shall not assign, transfer, sublicense, sublet, or encumber its interest in this Agreement or rights granted herein in any manner without the written consent of LICENSOR.

ARTICLE XV MORE FAVORABLE TERMS

15.01 In case LICENSOR shall grant a license under any United States Letters Patent under which a license is granted

ereunder to any manufacturer of coin-operated amusement
ames other than a company in which LICENSOR has a substantial
nterest, direct or indirect, which will permit such manufacturer
o manufacture and sell for any use within the scope of the
license herein granted at rates of royalty lower than those
provided for in this Agreement (excepting licenses the con-
sideration for which consists in whole or in part of patent
rights or other rights of such substantial value as in the
opinion of the LICENSOR are sufficient to warrant a reduction
in royalty rates below the rates provided for herein, or the
acceptance of such rights in lieu of royalties), the LICENSOR
will promptly notify the LICENSEE of the grant of such
license and furnish it with a copy thereof, and the LICENSEE
shall have the option, at any time within thirty (30) days
after the submission to it of a copy of such license agreement,
to enter into a similar license agreement with LICENSOR and
to substitute the same in place of this Agreement.

15.02 This instrument contains the entire and only agreement
between the parties and supersedes all preexisting agreements
between them respecting its subject matter. Any representa-
tion, promise, or condition in connection with such subject
matter which is not incorporated in this Agreement shall not
be binding upon either party. No modification, renewal,
extension, waiver, and (except as provided in Article VI
hereof) no termination of this Agreement or any of its provisions

shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by one of its executive officers, or in the case of LICENSOR, by a duly authorized officer or the Corporate Patent Counsel. As used, herein, the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms this Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

ARTICLE XVI

JUDICIAL DETERMINATION OF LICENSED PATENTS

16.01 If, in any proceeding in which the validity, infringement, or priority of invention of any claim of any of the said LICENSED PATENTS is in issue, a judgment or decree is entered which becomes not further reviewable through the exhaustion of all permissible applications for rehearing or review by a superior tribunal, or through the expiration of the time permitted for such applications (hereinafter referred to as an "irrevocable judgment"), the construction placed upon any such claim by such irrevocable judgment shall be thereafter followed not only as to such claim but as to all claims to which such construction applies, with respect to acts occurring thereafter; and, if such irrevocable judgment holds any claim invalid or is adverse to the patent as to

inventorship, the LICENSEE shall be relieved thereafter from including in its reports hereunder apparatus sold thereafter covered only by such claim or by any broader claim to which such irrevocable judgment is applicable, and from the performance of those other acts which may be required by this Agreement only because of any such claim; provided, however, that if there are two or more conflicting irrevocable judgments with respect to the same claim, the decision of the higher tribunal shall be followed thereafter, but if the tribunals be of equal dignity, then the decision more favorable to the claim shall be followed until the less favorable decision has been followed by the irrevocable judgment of another tribunal of at least equal dignity. In the event of conflicting irrevocable judgments of the Supreme Court of the United States, the latest shall control.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

17.01 Anything contained in this Agreement to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, both present and future, of any government having jurisdiction over either party hereto, and to orders, regulations, directions, or requests of any such government, or any department, agency, corporation, or court thereof, and to war, acts of public enemies, strikes, or other labor disturbances, fires, floods, acts of God, or any cause of like or different kind beyond the control of the parties, and the parties hereto shall be excused from any failure to perform any obligation hereunder to

; extent such failure is caused by such law, order, regulation,
rection, request, or contingency.

IN WITNESS WHEREOF, the parties hereto cause their
rporate names to be affixed by their respective duly
thorized officers or representatives.

THE MAGNAVOX COMPANY

By Thomas A. Briody
Title Corporate Patent Counsel
Date 8/22/75

test:

William J. Butler

CENTRONICS DATA COMPUTER CORP.

By Robert Howard
Title President
Date 8/18/75

test:

Ivan Rice

The Magnavox Company
FORT WAYNE, INDIANA 46804

AUG 11 1975
EXECUTIVE OFFICES

THOMAS A. BRIODY
CORPORATE PATENT COUNSEL

(219) 432-6511

August 1, 1975

Centronics Data Computer Corporation
One Wall Street
Hudson, New Hampshire 03051

Attention: Mr. Robert Howard, President

Gentlemen:

This letter is to confirm an amendment to the Agreement entitled "Nonexclusive Sublicense Agreement For Coin-Operated Game Devices," having an effective date of July 1, 1975, by adding the following provision to said Agreement:

- 1.) LICENSOR (Magnavox) grants to LICENSEE (Centronics Data Computer), subject to the reservations and conditions set forth in the aforesaid Agreement, a nonexclusive sublicense under the patents and patent applications of the other countries of Argentina, Australia, Belgium, Canada, France, Germany, Great Britain, Greece, Holland, India, Israel, Italy, Japan, Mexico, Spain, Sweden, Switzerland, and Venezuela, which represent counterpart patents of LICENSED PATENTS as defined in the Agreement of July 1, 1975 (but without the right to further sublicense) to use and sell, but not to manufacture, LICENSED PRODUCTS in said other countries.
- 2.) As consideration for the above license to use and sell LICENSED PRODUCTS, LICENSEE agrees to pay royalties for any LICENSED PRODUCTS used or sold in said other countries, of one-half percent ($\frac{1}{2}\%$) of the NET SELLING PRICE, which royalties shall be in addition to the royalties due according to the said Agreement of July 1, 1975.

Centronics Data Computer Corporation
August 1, 1975
Page 2

3.) This Amendment shall be effective on the last date signed below by the executing parties.

THE MAGNAVOX COMPANY

By Thomas A. Briody

Title Corporate Patent Counsel

Date August 1, 1975

CENTRONICS DATA COMPUTER CORPORATION

By R Howard

Title Pres

Date 8/18/75

dt